

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

PACIFIC STATE BANK,

Plaintiff and Respondent,

v.

DAWN GREENE et al.,

Defendants and Appellants.

C039662

(Super. Ct. No. CV012688)

ORDER MODIFYING OPINION AND
DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 10, 2003, be modified in the following particular:

At page 29, at the end of the first full paragraph, which begins "But in this case" and ends with the phrase "reasonable reliance on the misrepresentations." insert the following footnote 8, after the period at the end of the paragraph:

8/ In a petition for rehearing, Pacific disputes that a triable issue of fact exists on the issue of reasonable reliance because the guaranty agreements contained an acknowledgment that the signatories had read them and "the purported[ly] inaccurate

representation is revealed simply by reading the document before signing it." But the acknowledgment in the agreements, in and of itself, cannot extinguish an existing triable issue of material fact: "A party to a contract who has been guilty of fraud in its inducement cannot absolve himself from the effects of his fraud by any stipulation in the contract" because the fraud renders the whole contract voidable, including the waiver provision. (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 410, pp. 368-369; *Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Development Corp.* (1995) 32 Cal.App.4th 985, 996; *Danzig v. Jack Grynberg & Associates* (1984) 161 Cal.App.3d 1128, 1138.) Moreover, even assuming that Greene had actually read the guaranty agreements, there would be a triable issue of material fact whether she nonetheless reasonably relied on Pacific's representations concerning the agreements' more limited scope in light of the language in the agreements which was consistent with those representations and in the context of a transaction in which the guarantor would

not ordinarily expect to guarantee more than
the loan encumbering the acquired property.

This modification does not change the judgment.
Respondent's petition for rehearing is denied.

BY THE COURT:

SCOTLAND, P.J.

KOLKEY, J.